

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

JOHN J. LATZANICH, III,	:	
Plaintiff	:	CIVIL ACTION NO. 3:15-2346
v.	:	(JUDGE MANNION)
SEARS, ROEBUCK AND COMPANY,	:	
Defendant	:	

MEMORANDUM

Pending before the court is the report of Magistrate Judge Martin C. Carlson, which recommends that the plaintiff's motions for remand, (Doc. 6, Doc. 9), be granted and the instant action be remanded to the Court of Common Pleas of Monroe County. (Doc. 13). Based upon a review of the record, the court will adopt the report of Judge Carlson.

By way of relevant background, the plaintiff filed the instant action in the Court of Common Pleas of Monroe County raising claims for rescission, misrepresentation, breach of express and implied warranties, and a claim under Pennsylvania's Unfair Trade Practices and Consumer Protection laws relating to his purchase of a \$228.98 lawn mower from the defendant. Included in his complaint was a demand for punitive damages "not to exceed 10 percent of the Defendants' net worth." In light of this, the defendant

removed the case to this court on the basis of diversity jurisdiction. The plaintiff twice moved to have the case remanded to state court, the motions which are now the subject of Judge Carlson's report. Upon review, Judge Carlson determined that, despite the plaintiff's demand for punitive damages, the \$75,000 threshold for diversity jurisdiction has not, and cannot, be met in this case. As a result, he has recommended that the plaintiff's motions for remand be granted and the instant action remanded to the Court of Common Pleas of Monroe County. No objections have been filed by the parties to Judge Carlson's report.

Where no objection is made to a report and recommendation, the court should, as a matter of good practice, "satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." [Fed.R.Civ.P. 72\(b\)](#), advisory committee notes; see also [Univac Dental Co. v. Dentsply Intern., Inc.](#), 702 F.Supp.2d 465, 469 (2010) (citing [Henderson v. Carlson](#), 812 F.2d 874, 878 (3d Cir. 1987) (explaining judges should give some review to every Report and Recommendation)). Nevertheless, whether timely objections are made or not, the district court may accept, not accept or modify, in whole or in part, the findings or recommendations made by the magistrate judge. [28 U.S.C. §636\(b\)\(1\)](#); Local Rule 72.31.

The court has reviewed the recommended basis presented by Judge Carlson for remanding the instant action. Because the court agrees with the sound reasoning that led Judge Carlson to the conclusions in his report and finds no clear error on the face of the record, the court will adopt the report in its entirety. An appropriate order shall issue.

s/ Malachy E. Mannion
MALACHY E. MANNION
United States District Judge

Date: February 24, 2016

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